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CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 269

JAMES BENONI, CLAIMANT,

Appellant,

vs.

BETHLEHEM-FAIRFIELD SHIPYARD, INCORPORATED, EMPLOYER, AND MARYLAND CASUALTY COMPANY, INSURER

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF MARYLAND

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS

ROBERT E. COUGHLAN, JR.,
Counsel for Appellees.

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IN THE COURT OF APPEALS OF MARYLAND

No. 102, October Term, 1946

JAMES BENONI, CLAIMANT,

Appellant,

vs.

BETHLEHEM-FAIRFIELD SHIPYARD, INCORPORATED, EMPLOYER, AND MARYLAND CASUALTY COMPANY, INSURER,

Appellees

APPEAL FROM COURT OF APPEALS OF MARYLAND

APPELLEES' STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS

Appellees, Bethlehem-Fairfield Shipyard, Incorporated, Employer, and Maryland Casualty Company, Insurer, pursuant to Rule 7, Par. 3, and Rule 12, Par. 3, of the Supreme Court of the United States, set forth the following matters and reasons against the jurisdiction of this Court in the instant case, and move the Court to dismiss the appeal herein for the following reasons:

1. Because the judgment sought to be reviewed is not based upon a Federal ground adequate to support a review.

2. Because there is no substantial Federal question or controversy involved in this appeal.

In support of the aforegoing motions, the Appellees make the following statements:

Statement of Case

This case arises under the provisions of the Workmen's Compensation Act of Maryland, Article 101, Section 48(3), Code of Public General Laws of Maryland, 1939 (Flack's 1943 Supp. to the Code, at p. 1144), which provides:

> "Other Cases. In all other cases in this class of disability the compensation shall be fifty per centum of the difference between his average weekly wages and his wage-earning capacity thereafter in the same employment, or otherwise, if less than before the accident (but not to exceed $18.00 per week), payable during the continuance of such partial disability, but not to exceed $3,000.00, and, subject to reconsideration of the degree of such impairment by the Commission on its own motion, or upon application of any party in interest."

James Benoni, Appellant, while employed by the Bethlehem-Fairfield Shipyard, Incorporated, Employer, Appellee, sustained an accidental injury which arose out of and in the course of his employment on March 28, 1945. The injuries that he sustained were to his back and his right hand. At the time of the accidental injury, he was making Seventy-Five Dollars and Eighty-Eight Cents ($75.88) a week. He filed a claim for compensation with the State Industrial Accident Commission and was awarded compensation while temporarily totally disabled.

Later, he requested a hearing before the State Industrial Accident Commission to determine the nature and extent of his disability. His case was heard by the Commission

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on June 10, 1945. An order was passed by the State Industrial Accident Commission dated June 26, 1945, awarding him Seven Hundred Fifty Dollars ($750.00) under the "Other Cases Section." This compensation was to be paid him at the maximum rate of Eighteen Dollars ($18.00) a week and was to be paid for a period of forty-one and two-thirds (41⅔) weeks. From this order, the Appellant filed an appeal to the Court of Common Pleas of Baltimore City.

The Employer and Insurer then filed a Motion to Dismiss the appeal in the Court of Common Pleas. This matter came up for a hearing in the Court of Common Pleas and at that hearing the Appellant filed a motion asking the Court of Common Pleas, to rule as a matter of law, that the decision of the State Industrial Accident Commission be reversed. The Court denied this motion and at the same time denied the Employer's and Insurer's Motion to Dismiss the appeal. (See 52 At. 2d, 613.)

Thereupon, the Appellant, through his attorney, submitted a number of issues, these issues being substituted issues, and to these substituted issues the Employer and Insurer filed Exceptions. The Exceptions to the issues were heard by the Court and sustained and the Appellant was allowed five (5) days to file additional issues. Thereupon, the Appellant's attorney professed his inability to prepare additional issues and the Court then entered a judgment in favor of the Employer and Insurer and affirmed the decision of the State Industrial Accident Commission. The Appellant then filed an appeal to the Court of Appeals of Maryland.

The case was duly argued in the Court of Appeals and the decision of the Lower Court was affirmed.

The substance of all the assignments of error and contentions of the Appellant in their last analysis is that the

construction of the "Other Cases" provision of the Workmen's Compensation Act of Maryland made by the Court below is repugnant to the 14th Amendment to the Federal Constitution because such construction gives to the State Industrial Accident Commission unlimited authority and discretion to allow compensation thereunder without any prescribed guide, rule, basis or standard reasonably adapted to produce a fair result.

In short, Appellant seeks to have *this* Court review and revise the construction affixed to a State statute as to a State matter by the Court of last resort of the State.

This is the sole proposition upon which Appellant asks *this* Court to entertain jurisdiction.

The construction placed by the State Court upon its own statutes and constitution will not be reviewed by the Supreme Court.

The decision of the Supreme Court in the case of *Quong Ham Wah Co.* v. *Industrial Commission*, 255 U. S. 445, involved a question so closely parallel that it is respectfully submitted that of itself it disposes of the right of Appellant to sustain this appeal.

In the case cited, a State court of last resort construed a provision of the Workmen's Compensation Act of its State to be valid.

Appellant sought a writ of error to reverse the judgment.

In considering the writ of error sought, the Supreme Court said, page 448:

> "All the assignments and contentions made rest in their last analysis upon the assumption that, despite the construction of the statute made by the court below, it still must be here treated as repugnant to the Constitution because operating the discrimination origi-

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nally complained of. But it is elementary that this court is without authority to review and revise the construction affixed to a state statute as to a state matter by the court of last resort of the State. *Commercial Bank vs. Buckingham* 5 How. 317, 342; *Johnson vs. New York Life Insurance Co.* 187 U. S. 491, 496; *Ross vs. Oregon,* 227 U. S. 150, 162; *Ireland vs. Woods,* 246 U. S. 323, 330; *Stadelman vs. Miner,* 246 U. S. 544; *Erie R. R. Co. vs. Hamilton,* 248 U. S. 369, 371-372. It is hence obvious that the proposition upon which alone jurisdiction to entertain the writ can be based is so wanting in foundation as to be frivolous and therefore to impose upon us the duty to dismiss the cause for want of power to entertain it. *Farrell vs. O'Brien,* 199 U. S. 89, 100; *Goodrich vs. Ferris,* 214 U. S. 71, 79; *Toop vs. Ulysses Land Co.,* 237 U. S. 580, 583; *Sugarman vs. United States,* 249 U. S. 182, 184; *Berkman vs. United States,* 250 U. S. 114, 118; *Piedmont Power & Light Co. vs. Town of Graham,* 253 U. S. 193.

True it is elaborately argued that the court below erred in supposing that the statute was susceptible of the construction which it affixed to it and that, instead of adopting that construction, its duty was to hold the statute void for repugnancy to the Constitution on the grounds which were urged. But this in a different form of statement but disputes the correctness of the construction affixed by the court below to the state statute and assumes that that construction is here susceptible of being disregarded upon the theory of the existence of the discrimination contended for when, if the meaning affixed to the statute by the court below be accepted, every basis for such contended discrimination disappears. It follows that the argument but accentuates the frivolous character of the federal question relied upon."

To the same effect:

Cudahy Co. v. *Parramore,* 263 U. S. 418, 422;
Ward & Gow v. *Kunsky,* 259 U. S. 503, 510.

Holding that the Supreme Court in the exercise of its appellate jurisdiction is bound by the construction of the State law adopted by its court of last resort.

And see generally:

Concordia Ins. Co. v. *School Dist.*, 282 U. S. 545;
Morehead v. *N. Y. ex rel. Tipaldo*, 298 U. S. 587, at 609;
Gregg Dyeing Co. v. *Query*, 286 U. S. 472;
G. N. Ry Co. v. *Sunburst Oil & Ref. Co.*, 287 U. S. 358;
Hawks v. *Hamill*, 288 U. S. 52;
Glenn v. *Field Packing Co.*, 290 U. S. 177;
Hicklin v. *Coney*, 290 U. S. 169;
Burns Mtge. Co. v. *Fried*, 292 U. S. 487;
Highland Farms Dairy, Inc., v. *Agnew*, 300 U. S. 608;
Midland Realty Co. v. *Kansas City P. & L. Co.*, 300 U. S. 109;
Lauf v. *E. G. Shinner & Co.*, 303 U. S. 323, 338;
Carmichael v. *Southern Coal and Coke Co.*, 301 U. S. 495, at 507;
Ross v. *Oregon*, 227 U. S. 150.

Since the construction of the State Court controls, no Federal right of appellant is infringed and no Federal question is involved.

The inquiry here is whether the statute is constitutional as applied and enforced in respect of the situation presented.

Appellant contends that the construction by the Court below of the "Other Cases" provision is repugnant to the 14th Amendment to the Federal Constitution because it gives unlimited authority and discretion to the Commission to allow compensation without any prescribed guide, rule, basis or standard reasonably adapted to produce a fair result.

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That this contention is without merit is clearly shown by the court below in the companion case of *Allen* v. *Glenn L. Martin, et al.*, 52 At. 2d 605, at page 608:

> "Whether statutory guides or standards to effectuate a public policy are adequate or not, depends largely upon the nature of the subject matter. Compare *Field vs. Clark*, 143 U. S. 649, 12 S. Ct. 495, 36 L. Ed. 294 and *Currin vs. Wallace*, 306 U. S. 1, 59 S. Ct. 379, 83 L. Ed. 441. If the policy is sufficiently defined, it is immaterial that the process may involve the fixing of liquidated amounts without express definition. Compare *Chesapeake & Potomac Tel. Co. vs. State Board of Forestry*, 125 Md. 666, 675, 94 A. 322.
>
> The statute under "Other Cases," and as interpreted by this Court, sets a maximum limit as to the amount of compensation to be allowed and gives to the Commission the right to determine the amount to be paid within this limit. The statute, the Workmen's Compensation Act, was held constitutional by this Court in the case of *Solvuca vs. Ryan & Reilly Co.*, 131 Md. 265, 101 A. 710. The general policy of the Compensation Act is set out therein, Chapter 800 of the Acts of 1914. The Act now in effect defines the public agency, the State Industrial Accident Commission, which is to apply it and the subparagraph in dispute sets a maximum limit.
>
> The same section which provides for "Other Cases" also provides, for "disfigurements," that "compensation shall be allowed in the discretion of the Commission, for not less than ten weeks nor more than one hundred weeks, as the Commission may fix, in each case having due regard to the character of the mutilation and disfigurement as compared with mutilation and injury hereinbefore specifically provided for." In *Sweeting vs. American Knife Co.*, 226 N. Y. 199, 123 N. E. 82, 83, affirmed as to constitutionality in *New York Cent. R. Co. vs. Bianc*, 250 U. S. 596, 40 S. Ct. 44, 63 L. Ed. 1161, the disfigurement provision of the New York statute was attacked on the ground that it violated due process, in that it left the matter largely to

the discretion of the Commission. Judge Cardozo said: 'The Commission has found that there has been serious facial disfigurement, and that award of $2,500 is fair and equitable. * * * It is true that the Commission has a wide discretion, and in fixing a fair and equitable compensation it may inquire into all the circumstances that will help to guide its judgment. * * * Given the fact of injury, the Commission is to assess the damages. The presumption is that all relevant circumstances have been weighed in the assessment. * * * Nor does the statute become invalid because the Commission has some discretion in fixing the amount. The Legislature may provide for such a method of 'adjustment, determination and settlement' as it will. * * * Some injuries, as for instance the loss of a limb, may be so defined and classified that the appropriate compensation may, with a fair average of justice, be estimated in advance. But cases of disfigurement have their special problems. It is difficult, if not impossible, to define and classify the injuries. A flexible compensation makes for justice alike to employer and to workman.' To the same effect, see *Schwartz vs. Mt. Vernon-Woodberry Mills,* 206 S. C. 227, 33 S. E. 2d 517."

* * * * * * *

"The Commission's discretion to determine the aggregate amount of compensation in 'Other Cases' (within the statutory maximum) is not an arbitrary discretion, but must be exercised on the basis of substantial evidence. In effect, our construction of the 'Other Cases' provision is that the aggregate amount of compensation shall be determined in the discretion of the Commission, in each case having due regard to the character of the permanent partial disability, and the impairment of wage-earning capacity therefrom, as compared with the scheduled cases of permanent partial disability specifically provided for. This construction is not reducible to a mathematical formula, but permits on appeal judicial review of abuse of discretion, within the limits set out in our recent opinion in *Bethlehem-Sparrows Point Shipyard vs. Damasie-*

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wicz, 50 At. 2d 799. For 'Other Cases' the maximum aggregate is less than that fixed for scheduled permanent partial disabilities and still less than for permanent total disability. The Commission may properly consider these statutory differences in comparing the character of disabilities and the impairment of wage-earning capacity in 'Other Cases.' As we have repeatedly held, the Commission may find impairment of earning capacity, i. e. potential loss of earnings, although no actual loss of earnings may have occurred."

See also *Currin* v. *Wallace*, 306 U. S. 1, page 18.

Conclusion

The Appellant, under the guise of attacking the constitutionality of the "Other Cases" provision, seeks to have *this* Court compel the highest Court of Maryland to construe and interpret this provision in a manner different and contrary to the uniform construction placed upon the "Other Cases" provisions since 1928 by the Court of Appeals of Maryland. See *Allen* v. *Glenn L. Martin, et al.*, 52 A. 2d 605, at pages 609 and 610.

The sole purpose of this appeal is to ask this Court to review the construction given a State statute by the highest Court of the State. From the very earliest cases *this* Court has consistently refused to review a construction placed upon a statute by the highest Court of the State. This being the only contention of the Appellant there is no Federal question involved and this Court is without jurisdiction to review the case.

The only result the Appellant could obtain in these proceedings would be that *this* Court declare the "Other Cases" provision of the Act unconstitutional on whatever grounds such decision might be based. Invalidating the "Other Cases" provision of the Act, which is not sought by the Appellant, but rather he attempts to seek a result

which could not be obtained in this Court, namely, that Appellant's interpretation of an admittedly constitutional and unambiguous provision of a State statute be substituted for that placed upon it by the Court of Appeals of Maryland.

The effect of the only decision obtainable by this appeal, to wit, a holding that the "Other Cases" provision is unconstitutional, would result not only in the Appellant losing his right to the compensation awarded but would also adversely affect all employees who have and are now receiving compensation by awards under this section of the Workmen's Compensation Act. This would result in a calamity to workmen and untold chaos.

It is respectfully submitted that for the reasons stated the Supreme Court is without jurisdiction and Appellees' motion to dismiss should be granted.

Respectfully submitted,

ROBERT E. COUGHLAN, JR.,
Attorney for Appellees.

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